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SERVICE DATE - NOVEMBER 3, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34417]

Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant local trackage rights to UP over a BNSF line of railroad between BNSF milepost 114.5 and BNSF milepost 117.0 near Endicott, NE, a distance of approximately 2.5-miles.<sup>1</sup>

Although UP indicates that the transaction was scheduled to be consummated on October 20, 2003, the earliest the transaction could be consummated was October 21, 2003 (7 days after the filing of the notice).

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<sup>1</sup> UP submits that the trackage rights are only temporary rights, but, because they are “local” rather than “overhead” rights, they do not qualify for the Board’s new class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See Railroad Consolidation Procedures–Exemption for Temporary Trackage Rights, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34417 (Sub-No. 1), Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, wherein UP and BNSF request that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on October 15, 2004. That petition will be addressed by the Board in a separate decision.

The purpose of the trackage rights is to permit UP to serve the shipper at Endicott until BNSF's trackage can be repaired or other arrangements can be made for continued rail service to this shipper, following severe washouts on BNSF's line in this area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.-Lease and Operate, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34417 must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

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Decided: October 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary